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OFFICE OF PETITIONS

In re Application of Thompson et al.	:	
Application No. 10/809,979	:	Decision on Petition
Filing Date: March 26, 2004	:	
Attorney Docket No. Y3422-90701	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 4, 2009, to revive the above-identified application.

The petition is **granted**.

The Office mailed a final Office action on July 17, 2008. The final Office action set a shortened statutory period for reply of three (3) months.

A request for a three-month extension of time, but not a reply to the final Office action, was filed January 16, 2009.

Due to the extension of time, a reply could have been timely filed as late as Tuesday, January 20, 2009.¹ A reply was not filed. As a result, the application became abandoned as of January 21, 2009. A Notice of Abandonment was mailed April 8, 2009.

Application papers were filed and assigned Application No. 12/355,475 on January 16, 2009. The transmittal letter stated the application was a continuation of the instant application. The Office subsequently mailed a Notice stating drawings did not appear to be part of the application as filed and that a filing date would be accorded upon the submission of drawings. Drawings were filed May 11, 2009, and the application has been accorded a filing date of May 11, 2009.

The instant petition requests revival of the application for purposes of copendency with Application No. 10/809,979.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed,
- (2) The petition fee,

¹ January 17, 2009, was a Saturday. January 18, 2009, was a Sunday. January 19, 2009, was a federal holiday.

- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) A terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

As to item (1), the requirement for a reply is satisfied by the prior filing of continuing application, Application No. 10/809,979. As stated in 37 CFR 1.137(c), "In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application."

As to item (2), the petition fee of \$1,620 has been filed.

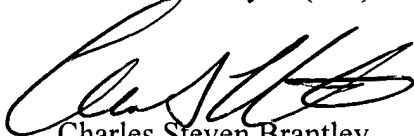
As to item (3), petitioner has stated the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

As to item (4), a terminal disclaimer is not required because the application was filed after June 8, 1995.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

Since this application is being revived for purposes of continuity only and since continuity has been established by this decision reviving the application, the application is again abandoned in favor of Application No. 10/809,979.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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